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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,472	07/18/2006	Ruth Thomsen	P-8940-US	4215
49443	7590	09/03/2008	EXAMINER	
Pearl Cohen Zedek Latzer, LLP 1500 Broadway 12th Floor New York, NY 10036			FOREMAN, JONATHAN M	
		ART UNIT	PAPER NUMBER	
		3736		
		MAIL DATE		DELIVERY MODE
		09/03/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/586,472	THOMSEN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	JONATHAN ML FOREMAN	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 6-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 6-10 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 6 - 10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 6 and 8 include limitations related to non-statutory subject matter in that they recite that an assassin bug is positioned within a receptacle.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,464,360 to Carlson et al.

4. In regard to claims 6 and 7, Carlson et al. disclose a receptacle (10) comprising a perforated outside wall (12), within which an insect is positioned, the receptacle comprising a movable partition (22) to hold the insect in place against a location on the perforated outside wall. The receptacle is a hollow cylinder and the outside wall is formed by one end surface of the receptacle (Figure 1), and wherein the receptacle comprises a piston rod (24) on the opposite end surface on which the movable partition is arranged.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,464,360 to Carlson et al. in view of U.S. Patent Application Publication No. 2007/0039236 to Geier et al.

7. In regard to claim 9, Carlson et al. disclose the partition being formed of an elastic and deformable material (Col. 4, lines 41 – 42), and disclose that the receptacle can be made from other shapes (Col. 4, lines 36 - 37). However, Carlson et al. fail to disclose the receptacle being approximately spherical. Geier et al. teach a device for holding an insect and that it can be formed to have any shape, including that of a hollow cylinder or a ball [0057]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cylindrical receptacle disclosed by Carlson et al. to include an approximately spherical shape in that Geier et al. teach an insect receptacle to be either cylindrical or spherical [0057].

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,464,360 to Carlson et al. in view of U.S. Patent No. 6,226,919 to Septer.

9. In regard to claim 10, Carlson et al. disclose the receptacle being formed of a deformable material (Col. 4, line 40) and including a mesh-like structure (Col. 4, lines 41 – 42), but fail to disclose the mesh-like structure being a fabric. Septer discloses a device for holding an insect that includes a mesh-like fabric structure (20). It would have been obvious to one having ordinary skill

in the art at the time the invention was made to modify the mesh-like structure as disclosed by Carlson et al. to include a mesh-like fabric as taught by Setpter in that a mesh-like fabric has been shown to be most effective in holding insects without obstructing the flow of air through the mesh-like structure (Col. 3, lines 32-35).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN ML FOREMAN whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. M. F./  
Examiner, Art Unit 3736  
/Brian Szmal/  
Examiner, Art Unit 3736

